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J.J., Appellant)	
)	
and)	Docket No. 15-359
)	Issued: April 3, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Edison, NJ, Employer)	
)	

Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 5, 2014 appellant, through counsel, filed a timely appeal from an August 15, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

On appeal, counsel contends that appellant was actually claiming a recurrence of disability based on a change in the nature and extent of his limited-duty job requirements and, therefore, OWCP erred in its adjudication of his claim as a new occupational disease claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 16, 2013 appellant, then a 64-year-old mail processor, filed a recurrence claim (Form CA-2a), under File No. xxxxxx217, alleging that he sustained a recurrence of an October 30, 2008 employment injury after returning to a limited-duty position. He indicated that he returned to limited duty on November 4, 2013 and stopped work on November 23, 2013 because the position required him to use his thumbs and hands in excess of four hours per day. The employing establishment indicated that appellant had not performed a full day on the job as he was in training for three continuous weeks and did not exceed his medical restrictions as there was no speed requirement and he was able to use either hand and the “one finger hunt and peck” method to keyboard as needed.

In reports dated November 12, 2013 through January 16, 2014, Dr. Robert Lombardi, a Board-certified orthopedic hand surgeon, indicated that appellant was a federal employee and continued to have bilateral thumb pain “with light lifting and typing.” He also reported right elbow pain with rotational movement. Dr. Lombardi diagnosed bilateral osteoarthritis of the hand, bilateral carpal tunnel syndrome, and severe degenerative joint disease of the bilateral wrists, thumb, and right elbow. He restricted appellant from lifting more than one pound, no use of thumbs, limited use of hands to four hours, no fine manipulation or grasping, and no repetitive motion of the right and left thumb.

An electromyography and nerve conduction studies (EMG/NCS) dated January 15, 2014 revealed no evidence of peripheral entrapment neuropathy or cervical radiculopathy regarding the right upper extremity and suggested ulnar nerve irritation at the elbow.

By letter dated March 19, 2014, OWCP determined that based on appellant’s description of his condition he was actually claiming a new occupational disease attributed to repetitive work and exposure over the course of more than one work shift. It developed appellant’s claim as a new occupational disease and assigned File No. xxxxxx656.

In an April 7, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant, through counsel, submitted reports dated January 23 through April 10, 2014 from Dr. Lombardi who reiterated his diagnoses and opinions. In a brief dated May 1, 2014, appellant’s counsel indicated that appellant had a previously accepted occupational disease claim for bilateral carpal tunnel syndrome and right radial styloid tenosynovitis under File No. xxxxxx217. He further indicated that in November 2013 appellant returned to work in a full-time limited-duty position, which required the use of hands more than four hours per day and the use of thumbs in violation of his medical restrictions. As a result, appellant stopped work on November 23, 2013 and did not return.

By decision dated May 15, 2014, OWCP denied the new occupational disease claim on the basis that appellant failed to establish fact of injury, finding that the evidence was not sufficient to establish that a medical condition was diagnosed in connection with factors of his federal employment.

On May 22, 2014 appellant, through counsel, requested reconsideration and submitted a September 26, 2013 report from Dr. Lombardi who reiterated his diagnoses and medical restrictions.

A September 5, 2013 rehabilitation assignment offer for a customer care agent position from the employing establishment identified the date of injury as October 30, 2008 and OWCP File No. xxxxxx217. It indicated that duties required “occasional simple grasping (mouse); occasional pushing/pulling using a computer mouse, interchangeable to right/left side as needed for comfort; and occasional fine manipulation or use of single finger when using a keyboard.” The employing establishment noted that the learning process encompassed three weeks of training, the first two weeks in a classroom setting and the third week with an instructor on “live” customer calls.

By decision dated August 15, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

² *Id.*

³ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant filed a recurrence claim (Form CA-2a), under File No. xxxxxx217, for a bilateral hand condition. OWCP developed the claim as a new occupational disease and assigned File No. xxxxxx656. The record reveals that on October 30, 2008 appellant previously filed an occupational disease claim, assigned File No. xxxxxx217, for injuries to the same part of the body. The factual and medical evidence pertaining to appellant's employment injuries in File No. xxxxxx217, however, are not contained in the case record. Furthermore, the record contains evidence of appellant's attempt to file a recurrence claim of the October 30, 2008 employment injury. Nevertheless, OWCP continued to adjudicate the claim as a new occupational disease even though the evidence supports that appellant claimed he sustained a recurrence of his bilateral hand injury. The Board finds that OWCP failed to properly combine or request combination of the present case record with the record of the October 30, 2008 employment injury, which appellant implicated as the initial cause of his bilateral hand condition.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.⁷ The Board will consequently remand the case for OWCP to combine the current case record with File No. xxxxxx217 and determine whether appellant sustained either a recurrence of disability due to his October 30, 2008 employment injury or a new employment injury.⁸ Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision on the merits.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁶ See *O.W.*, *supra* note 4.

⁷ See *Claudio Vazquez*, 52 ECAB 496 (2001).

⁸ See *C.B.*, Docket No. 13-1091 (issued September 16, 2013) (remanding the case to OWCP to combine case files where the record revealed that appellant attributed a March 2, 2012 injury to a previously accepted April 12, 2004 employment injury). See also *M.Z.*, Docket No. 13-414 (issued June 26, 2012) (remanding the case to OWCP to combine case files where it did not adequately explain why it adjudicated appellant's notice of recurrence of disability as a new injury given that she alleged that she experienced pain immediately upon returning to work rather than relating her condition to new work factors).

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: April 3, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board